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June 9, 1981

United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, NY 10278

ATTENTION: JULIO MORALES-SANCHEZ, Director of Enforcement

Re: Combe Fill Corporation, EPA #CWA-II-81-7

Dear Sir:

We are in receipt of your order dated March 19, 1981 in reference to the above caption matter. We wish to inform you of our position that the order is factually and legally erroneous and that the Environmental Protection Agency and the United States Army Corp. of Engineers has no jurisdiction over the land fill set forth in the order or as to the operations conducted by Combe Fill at that site.

The agency's order states that it has determined that the quality of the water in certain streams may be affected by soil erosion from the subject tract, the latter being used as a land fill site and upon which fill material has been placed. It must be emphasized that the tract in question is a parcel of approximately 200 acres in size. The order makes no finding that this tract or any portion thereof is considered to be wetlands. The order is defective because it fails in any way to set forth a specific designation, or any designation for that matter, of that portion of that site which the agency claims to be wetlands. In fact, we submit that the property is not wetlands within the contemplation of the Clean Water Act.

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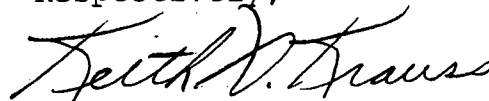
Additionally, the order makes no finding that Combe Fill's operations are such that it is discharging materials into navigable waters. It merely states that fill material has been placed on the subject property. In fact, Combe Fill does not discharge pollutants into the navigable waters of the United States.

Further, the activities of Combe Fill at the subject site are governed by the statutes and regulations of the state of New Jersey which supersede the Federal Government in this instance. Specifically, Combe Fill is regulated by the Department of Environmental Protection of the state of New Jersey and the Board of Public Utilities Commissioners of the state of New Jersey. Its activities are local and without direct nexus to the navigable waters of the United States which is the only area as to which this agency and the Army Corp. of Engineers has jurisdiction.

Indeed, with respect to the latter consideration, we submit that the activities of Combe Fill are outside of the jurisdiction of the Federal Government. Specifically, the United States has jurisdiction only over navigable waters of the United States and adjacent wetlands. The subject parcel, however, is neither wetlands nor is it adjacent to navigable waters of the United States. We submit that even under the Army Corp. of Engineer's regulations, no portion of the land fill is subject to Federal jurisdiction. Any reading of the Clean Water Act which would extend jurisdiction to the subject property distorts that statute as to so extend it to areas which are unconnected to the navigable waters of the United States.

We submit then, that the United States has no jurisdiction to promulgate the March 19, 1981 order and it is thus void and of no effect. We further submit it is legally and factually deficient to the extent that it fails to set forth findings which would support the conclusion that Combe Fill is in violation of the Clean Water Act and that therefore this exercise of authority by the agency is improper, illegal, and without effect. We hereby request that this matter be set down for a hearing so that the agency's order and the erroneous findings contained therein can be vacated.

Respectively,



Keith A. Krauss

KAK:ed